

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JANICE M. WELLMAN,

:

Plaintiff,

v.

:

Case No. 3:19-cv-263

COMMISSIONER OF SOCIAL
SECURITY,

:

JUDGE WALTER H. RICE

Defendant.

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #15);
OVERRULING DEFENDANT'S OBJECTIONS THERETO (DOC. #16);
REVERSING ALJ'S NON-DISABILITY FINDING; REMANDING
MATTER UNDER SENTENCE FOUR OF 42 U.S.C. § 405(g) FOR
FURTHER PROCEEDINGS; JUDGMENT TO ENTER IN FAVOR OF
PLAINTIFF AND AGAINST DEFENDANT; TERMINATION ENTRY

On August 5, 2020, United States Magistrate Judge Michael J. Newman issued a Report and Recommendations, Doc. #15, recommending that the Court reverse the ALJ's non-disability finding as unsupported by substantial evidence, and remand the matter to the Commissioner for further proceedings. This matter is currently before the Court on Defendant's Objections, Doc. #16, to that judicial filing, and Plaintiff's Response thereto, Doc. #17.

Plaintiff suffers from fibromyalgia, asthma, mild degenerative disc disease of the lumbar spine, mild bursitis of the hips, residuals of a partial nephrectomy and bladder repair surgery, depression and anxiety. Doc. #7-13, PageID#1587. The

ALJ found that Plaintiff was not disabled prior to November 25, 2018, but became disabled on that date (when she turned 55 years old) and has continued to be disabled. *Id.* at PageID#1583. Plaintiff appealed the ALJ's finding that she was not disabled prior to November 25, 2018.

Magistrate Judge Newman found that the ALJ erred in his assessment of the opinions of Plaintiff's treating physician, Dr. Sarah Khavari, M.D., and treating physical therapist, Wendy Chorny. He concluded that the reasons given by the ALJ for rejecting their opinions were contrary to objective medical evidence in the record that showed significant physical abnormalities. Magistrate Judge Newman also found that the ALJ erred in his assessment of the opinions of record-reviewing physicians Linda Hall, M.D., and Michael Delphia, M.D., in that the ALJ failed to identify specific record evidence that supported their conclusions. Magistrate Judge Newman did not address Plaintiff's other alleged errors, but directed that the ALJ consider those on remand. Doc. #15, PageID#2819.

Based on the reasoning and citations of authority set forth in the Report and Recommendations, Doc. #15, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety, and OVERRULES Defendant's Objections as meritless. The Court agrees with Magistrate Judge Newman that the ALJ's non-disability finding is not supported by substantial evidence. That finding is therefore REVERSED.

Nevertheless, because evidence of disability is not overwhelming, the Court REMANDS the matter to the Commissioner under Sentence Four of 42 U.S.C.

§ 405(g) for further proceedings consistent with the Report and Recommendations, specifically to determine whether Plaintiff was disabled prior to November 25, 2018. On remand, the ALJ shall consider not only the errors addressed by Magistrate Judge Newman, but also the other errors raised by Plaintiff in her Statement of Errors.

Judgment shall be entered in favor of Plaintiff and against Defendant.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: October 26, 2020



(tp - per Judge Rice authorization after his review)

WALTER H. RICE
UNITED STATES DISTRICT JUDGE